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MINISTRY OF ENVIRONMENT FORESTRY
AND TOURISM



SHORT COURSE HIGHLIGHTING THE LEGAL IMPLICATIONS OF NAMIBIA'S NATIONALLY DETERMINED CONTRIBUTIONS (NDC)

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COURSE LAYOUT

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- What is climate change?
- What is the effect of climate change on the global community?
- What is the Paris Agreement
- How does the Paris Agreement relate to Namibia?
- **PART II**
- The effect of legislation on NDC targets
- Interpretation of law (legislative silence and legislative absence)
- **PART III**
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- Agriculture, Forestry and Other Land Use (AFLOU) – Legal findings and recommendations
- Industrial process and product use (IPPU) – Legal findings and recommendations
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- Conclusion & Vote of thanks



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PART I

WHAT IS CLIMATE CHANGE?

- **Climate** change can most readily be described as the increase in **global warming** driven by human-induced emissions of **greenhouse gases** and the resulting large-scale shifts in weather patterns that flow from the aforesaid.
- The largest contributor of global warming is the emission of greenhouse house gases which cause the greenhouse/ effect. These gases trap and absorb heat in the earth's atmosphere.
- more than 90% of these gases are carbon dioxide and methane.
- Green house gases are primarily released into the earths atmosphere through the burning of fossil fuel with additional contributions from agriculture, deforestation, and manufacturing.

WHAT IS THE EFFECT ON THE GLOBAL COMMUNITY?

- Increased heat, drought and insect outbreaks, all linked to **climate change**, have increased wildfires.
- Declining water supplies,
- Reduced agricultural yields,
- Health **impacts** in cities due to heat, and flooding and erosion in coastal areas are additional concerns.
- The aforesaid all contribute to making the planet an increasingly inhospitable environment to live in.

THE PARIS AGREEMENT

- The **Paris Agreement** is a legally binding international treaty on climate change. It was adopted by 196 Parties at COP 21 in Paris, on 12 December 2015.
- Entered into force in November of 2016.
- Its goal is to **limit global warming** to well below 2, **preferably to 1.5 degrees Celsius**, compared to pre-industrial levels.
- It brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects.
- By 2020, countries submit their plans for climate action known as **nationally determined contributions (NDCs)**

HOW DOES THE AGREEMENT RELATE TO NAMIBIA, WHAT HAVE WE DONE?

- Develop a national adaptation strategy and begin operationalization;
- Consideration of climate change into national, sub-national and sector policy framework.
- the Ministry of Environment, Forestry and Tourism (MEFT) has anchored its targets in the following four sectors, namely; a) Energy, b) IPPU, c) AFOLU, and d) Waste.
- Achieving the desired NDC targets may have a litany of implications in a variety of fields ranging from *inter alia* commerce, technical advancement and legal



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PART II

IMPERATIVE LEGAL PRINCIPLES

EFFECT OF NAMIBIAN LEGISLATION ON NDC TARGETS

- Legal **Compliance** means conforming to a rule, such as a specification, policy, standard or law.
- Due to the increasing number of regulations and need for operational transparency, organizations are increasingly adopting the use of consolidated and harmonized sets of compliance controls.
- This approach is used to ensure that all necessary governance requirements can be met without the unnecessary duplication of effort and activity from resources.
- This will ultimately mean that the MEFT is able to achieve the set out NDC targets

LEGAL INTERPRETATION (ASSESSMENT)

- **Legal (Statutory) interpretation** is defined as the process by which courts interpret and apply legislation. Some amount of interpretation is often necessary when a case involves a statute or a policy document.
- **Legal Review** is a methodology utilised to determine the applicability and validity of any statute on a topic and to further provide cross reference to applicable provisions where necessary.
- The words of a statute have a plain and a straightforward meaning.
- However in many cases, there is some ambiguity in the words of the statute or document.
- In common law jurisdictions, the judiciary may apply rules of statutory interpretation both to legislation enacted by the legislature and to delegated legislation such as administrative agency regulations.

EFFECT OF “*LEGISLATIVE SILENCE*”

- In the event that the legislation is silent on a matter, it is deemed to mean that the law does not regulate the subject matter.
- The **cautionary note** here to policymakers is that this will be open to abuse and attract a protracted litigious process by those that are within the industry for financial gain.
- The aforementioned will not be in the best interest of the country.



EFFECT OF “*LEGISLATIVE ABSENCE*”

- The effect of legislative absence is that the industry works in a vacuum.
- In the event that the sector at present is not adequately regulated and as such there needs to be urgent action taken by policy makers in regulating the applicable NDC sector target.





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PART III

NDC SECTOR TARGETS

The proposed targets as set by the Ministry of Environment, Forestry and Tourism (MEFT) in the four sectors, namely;

a) Energy

b) AFOLU - AGRICULTURE, FORESTRY and OTHER LAND USE

c) IPPU - INDUSTRIAL PROCESS AND PRODUCT USE

d) Waste



ENERGY SECTOR – INTRODUCTION

ENERGY SECTOR

- The energy sector relates to broad actions to shift from fossil fuels to renewable energy sources, improve energy efficiency through various DSM measures, and reduce fossil fuel consumption through a series of measures in the road transportation sector.



ENERGY – SECTOR TARGETS

NDC TARGETS:

- REFIT 170 MW PV - replacing imports plus Ruacana
- Rooftop systems (45 MW PV) - replacing imports
- Embed generation - 13 MW PV replacing imports
- Omburu 20 MW PV - replacing imports
- Lüderitz Wind 40 MW - replacing imports
- Biomass Energy plant 40MW - replacing imports
- Fuel switching - Hydrogen replacing diesel
- 10 000 Electric Vehicles - replacing gasoline
- Baynes Hydro - 300 of 600 MW
- Solar Thermal Road Map - 20 000 SWH
- Transport – LDV – reducing fuel use by 20%



ENERGY – LEGAL FINDINGS

LEGAL FINDINGS:

- Based on the proposed targets under the sub-sector of electricity generation, the reviewed legal documents do not adequately support the achievement of the proposed targets.
- The proposed targets, under the sub-sector of transport such as that of electric vehicles and LDV transport, are not regulated in Namibia.
- The risk of this is that Namibia will not be able to achieve this NDC target in so far as it relates to LDV transport.



ENERGY – LEGAL RECOMMENDATIONS

- **LEGAL RECOMMENDATIONS:**

- Promulgation of the Energy Bill of 2016 and Electricity Bill of 2016
- Extensive roll out of the Modified Single Buyer Model
- National Energy Efficiency Policy
- Electric vehicles and Transport LDV
- National Biofuel Strategy and Framework is developed to ensure that this target is met. As recommended the manufacture of LDV within Namibia will ensure that Namibia regulates the use of biodiesel (diesel made from plant matters) and replace normal diesel.
- The proposed framework takes into account the water food energy nexus.



AFLOU – INTRODUCTION

- The AFOLU sector is a key sector and among the highest emitters. Emissions come from the use of fuelwood, the production of charcoal and wood removals for construction and other purposes, especially in rural areas.
- The livestock industry is also a major contributor through mainly enteric fermentation but offers restricted mitigation avenues because of the extensive production system.



AFOLU

- The **primary strength** of the AFOLU sector is that the majority of the mechanisms' primarily in the area of Forestry are already entrenched in legal instruments that carry the force of law.
- Not only are the mechanisms envisaged represented as provisions of the Forestry Act of 2001 the aforesaid act goes a step further by establishing a body responsible for the drafting, execution and monitoring of policy as well as the provisions of the act.
- In as far as the efforts centered around feedlots are concerned there exist adequate legislative and regulatory instruments that can ensure that the proliferation of this activity is executed sustainably and responsibly. Whilst the mechanisms themselves are not expressed in the statutory instruments, the statutes such as the Local Authorities Act 1992 and Environmental Management Act 2007 provide for the promulgation of possibly far-reaching regulations that can effectively be tailored towards the execution of this particular target.

AFOLU – SECTOR TARGETS

NDC TARGET:

- Reduce deforestation rate by 75 %
- Reforest of 20,000 ha per year
- Restore 15.5 million ha of grassland savannah and soil carbon
- Reduce the removal of wood by 60 %
- Afforest 5,000 ha per year
- Plant 1,000 ha of trees per year under Agroforestry
- Fatten 250,000 cattle heads in feedlots



AFOLU – LEGAL FINDINGS

LEGAL FINDINGS:

The reviews identify that the following proposed targets as legally feasible to implement:

- Reduce deforestation rate by 75 %
- Reforest of 20,000 ha per year
- Reduce the removal of wood by 60 %
- Afforest 5,000 ha per year
- Plant 1,000 ha of trees per year under Agroforestry

Due to the **absence of national legislation**, the following targets were found to have legal implications

- Restore 15.5 million ha of grassland savannah and soil carbon
- Fatten 250,000 cattle heads in feedlots



AFOLU

- **LEGAL RECOMMENDATIONS:**

- The restoration of Savannah Grasslands is woefully under legislated.
- The challenge in this respect is that no legal guidance is provided to the authorities as they attempt to meet this NDC and as such, they remain unaided in their interactions with private citizens who may be affected by policy decisions.
- A litany of administrative law concerns may rear themselves with affected persons such as farmers or traditional communities living in areas affected by these efforts. It is strongly recommended that regulatory efforts be made in this respect.



IPPU – INTRODUCTION

- The legal assessment sought an overview of changes in the direct emissions in the RAC sub-sectors on in refrigerants devices with Hydrofluorocarbons (HFCs) which are released in the atmosphere during their lifetime (including periodic refilling when the refrigerant gas is depleted) and also at disposal and reviews and discusses the implications of policy documents from key sectors on national mitigation efforts.



IPPU

- **NDC TARGETS:**

- Split residential air conditioners
- Car air conditioning
- Domestic refrigeration
- Commercial refrigeration (Stand-alone equipment)
- Commercial refrigeration (Condensing units)
- Replace 23% clinker in cement production



IPPU



- **LEGAL FINDINGS:**
- Due to the **absence of national legislation**, the following targets were found to have legal implications:
- Split residential air conditioners
- Car air conditioning
- Domestic refrigeration
- Commercial refrigeration (Stand-alone equipment)
- Commercial refrigeration (Condensing units)

IPPU – LEGAL RECOMMENDATIONS



- **LEGAL RECOMMENDATIONS:**
- At present the Ministry of Trade and Industrialisation (MTI) has commenced with the **green cooling imitative**. This is aimed at monitoring the global warming and ozone depleting impact of refrigerants used in cooling appliances.
- As such it is recommended that the introduction mandatory reporting by MTI on an annual basis is conducted. This being in terms of the use of refrigerants and the operation of systems and appliances. For example, suppliers of HFC refrigerants are required to report all HFCs if they exceed 100 kg in a calendar year. This information is used to determine whether restrictions should be imposed and if such should be legislated as discussed below.
- The government ensures the development of legal, regulatory, and technical instruments such as a Carbon Tax Bill and/or a Climate Change Bill which necessary to advance the application of thermal energy applications.

IPPU – RECOMMENDATIONS CONT.

- MEFT and MME promote the broad uptake of modern thermal energy technologies in households, commerce, industry through a policy.
- Government replaces inefficient electric and other appliances.
- A national policy is developed that would promote the local assembly and/or manufacturing of thermal energy appliances.



IPPU – RECOMMENDATIONS CONT.



- In terms of the Cement Regulations as discussed in the Standards Act of 2005, there were no strengths identified insofar, as it relates to climate adaptation and change. The aforementioned regulations set out the standards in respect of the quality of cement to be produced.
- It is **silent** on the replacement of clinker by 23% in the production of Portland cement. It is **silent** in terms of the impact of the manufacturing of cement on the environment or climate change. (see *discussion on legislative silence and legislative absence*)
- In the event that government compels the industry to comply with the need to balance the impact of this industry on climate change *vis-à-vis* the economic development as set out in the Harambee Prosperity Plan (HPP).
- The risk for litigation by cement manufacturers exists. Therefore, policy makers should be mindful of this.
- It is therefore advised that stakeholders are consulted prior to the imposition of such a regulation within the legal framework.

IPPU – RECOMMENDATIONS

- In the event that government compels the industry to comply with the need to balance the impact of this industry on climate change *vis-à-vis* the economic development as set out in the Harambee Prosperity Plan (HPP). The risk for litigation by cement manufacturers exists. Therefore, policy makers should be mindful of this.
- It is therefore advised that stakeholders are consulted prior to the imposition of such a regulation within the legal framework.

WASTE – INTRODUCTION



- The legal assessment sought to determine in Namibia an analysis of solid waste is generated by domestic, industrial, commercial, and agricultural activities whereas wastewater is generated mostly through domestic, industrial, and commercial activities.
- Urbanized areas have collection and separation systems for the management of municipal solid waste and industrial waste.
- Materials such as metal, plastic, and paper are removed and recycled in towns like Windhoek and Walvis Bay.

WASTE – SECTOR TARGETS

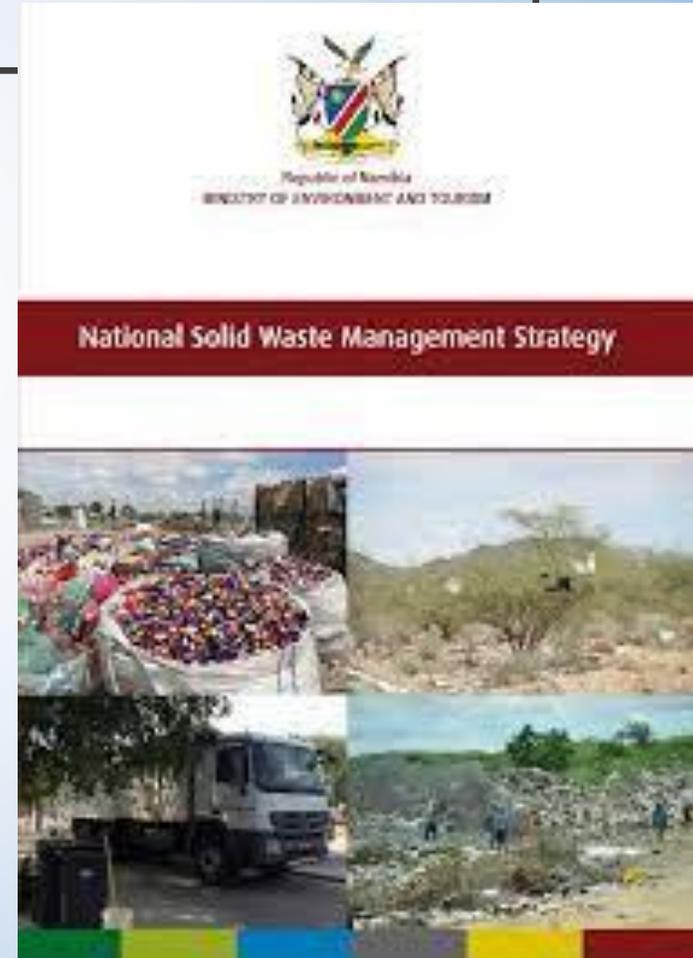
NDC TARGETS:

- Transform 70% MSW to electricity and compost
- Increase Recycling of plastic waste by 70%
- Increase Recycling of e-waste by 70%



WASTE – LEGAL FINDINGS

- **LEGAL FINDINGS:**
- The targets are legal feasible to implement:
- Transform 70% MSW to electricity and compost
- Increase Recycling of plastic waste by 70%
- Increase Recycling of e-waste by 70%



WASTE

LEGAL RECOMMENDATIONS:

- To Promulgate the Pollution Control and Waste Management Bill.
- To develop the National Solid Waste Management Strategy of 2018 into a national policy.
- To develop a universal adoption by local authorities of the Model Sewerage and Drainage Regulations to ensure consistency in waste management.
- A review into Hazardous Waste in respect of the sea-based disposal for waste management activities of local authorities.



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PART IV

CONCLUSION:

- The legal reviews of the proposed NDCs targets against the relevant legislations was found to be associated with legal implications for some targets in some sectors.
 1. In the **Energy**, the targets of electric vehicles and LDV transport are not regulated in Namibia. Therefore, implementation such targets might not be fully implemented due to a lack of legislations. Furthermore, the electricity generations targets need the support of the list bill to be made in laws.
 2. The **AFOLU** sector are all directly or indirectly, save for the restoration of 15.5 million ha of Savannah grassland, supported by instruments that enjoy the force of law. The aforesaid results in there being mechanisms that can be utilised towards the achievement of same in a shrewd manner with minimal litigious risk.
 3. The **IPPU** targets were also founds to have some legal implications as the absence of legislation that regulates the sector to implement the targets.
 4. Adequate **waste management** practices include the reduction and prevention of waste, as well as waste treatment, disposal and recycling. Proper waste disposal and management as referred to in the existing legislation. Although legislation is limited to implement the Waste sector targets, the little existing were found sufficient to support the implementations (modalities of legal regulations) of the targets and which can improve by considering the legal recommendations for that sector.

Thus, integrating adaptation and mitigation strategies and the promulgation of impending bills to become legislation is critical for the legal framework.

THANK YOU

Thank you esteemed Honourable members of parliament, the Ministry of Environment, Forestry and Tourism, UNDP, DFRN, UNAM and all stakeholders for the opportunity to present the legal assessment report.

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